IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Crl.Rev.Pet.No. 805 of 2000()

CRA.178/1994 of SESSIONS COURT, MANJERI
CC.161/1994 of JUDL. MAGISTRATE OF FIRST CLASS, MALAPPURAM

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REVN. PETITIONER:

KINATTINGAL PARAMBIL SETHUMADHAVAN,
S/O.KESAVAN PANICKER,
KAVUNGAL, MALAPPURAM,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR
SMT.SMITHA BABU

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

2. THE SUB INSPECTOR OF POLICE,
MALAPPURAM POLICE STATION,
MALAPPURAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.4264/2000 IN CRL.R.P.NO.805/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

23/10/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

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Crl.R.P.No.805 of 2000

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Dated this the 23rd day of October, 2007

O R D E R

The revision petitioner is the accused in C.C.No.161/1994 in the file of the Judicial Magistrate of the First Class, Malappuram, with respect to the offences under Sections 279 and 338 I.P.C and Rule 224 read with Section 177 of the Motor Vehicles Act and stands convicted and sentenced to undergo simple imprisonment for six months for the offence under Section 279 I.P.C and simple imprisonment for one year for the offence under Section 338 I.P.C and to pay a fine of Rs.100/- and in default to undergo simple imprisonment for five days for the offence under Rule 224 read with Section 177 of the M.V.Act.

2. It is the prosecution case that the accused drove autorickshaw No.KL-10 A/6042 through the Malappuram-Perinthalmanna road in a rash and negligent manner so as to endanger human life on 23/10/1993 at about 6 p.m and knocked down a four year old child who was walking through the northern side of the road and that the child sustained grievous hurt.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 8 and Exts.P1 to P7. There was no mechanical defect to the vehicle is established from the evidence of PW.7 the A.M.V.I and Ext.P7 the Vehicle Inspection Report. PW.1 the mother of the child and PW.2 the police constable have testified to the occurrence. Both of them have witnessed the incident. Both of them have stated that the vehicle was driven in over speed and have witnessed the vehicle hitting the child. As per the scene mahazar the incident has taken place on the northern side of the road which is having a width of 8.54 metres. The vehicle capsized after hitting the child when the accused applied sudden break. The same would indicate that the auto-rickshaw was driven in over speed. The prosecution allegation as to the rash and negligent driving stands established. PW.3 the doctor who examined the injured child has proved Ext.P2 wound certificate as per which it is mentioned that the C.T. scan confirmed the fracture of the skull bone, and also injuries of sixth and seventh cranial nerves. The child has sustained serious injuries. I find that nothing is brought out to disturb the concurrent findings of the court below. The conviction is confirmed.

4. The counsel for the revision petitioner has pleaded for leniency pointing out that 14 years have elapsed since the commencement of the proceedings and so far the accused was facing the ordeal of the criminal proceedings and he is the only earning member of the family. In the circumstances I find that imprisonment can be avoided. In the result, the sentence imposed for the offence under Section 338 I.P.C is modified to imprisonment till the rising of the court and to pay a compensation of rupees twenty-five thousand to PW.1 the mother of the injured child, and in default to undergo simple imprisonment for six months. No separate sentence is awarded to the rest of the offences. The revision petitioner/accused is granted six months time to remit the amount of compensation. He shall appear before the Judicial Magistrate of the First Class, Malappuram, on 24/04/2008 to receive the sentence. The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.805 of 2000

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O R D E R

23rd October, 2007